O REPORT | O FOURTH SESSION | O THIRTY-NINTH PARLIAMENT

Special Committee to Appoint a Representative for Children and Youth

LEGISLATIVE ASSEMBLY
PROVINCE OF BRITISH COLUMBIA

November 15, 2011

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Representative for Children and Youth containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

Colin Hansen, MLA
Chair

Mable Elmore, MLA
Deputy Chair

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Composition of the Committee

Members

Colin Hansen	(Chair)	Vancouver-Quilchena
Mable Elmore	(Deputy Chair)	Vancouver-Kensington
Rob Howard		Richmond Centre
Maurine Karagianis		Esquimalt-Royal Roads
Ben Stewart		Westside-Kelowna
Dr. Moira Stilwell		Vancouver-Langara
Claire Trevena		North Island

Clerk to the Committee

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Terms of Reference

On Opening Day of the fourth session, October 3, 2011, the Legislative Assembly reappointed the Special Committee, which was first struck on June 2, to unanimously recommend to the House the appointment of a Representative for Children and Youth, pursuant to section 2 of the *Representative for Children and Youth Act*, and that the said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

1. to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;

2. to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;

3. to adjourn from place to place as may be convenient; and

4. to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

Introduction

Hon. Ted Hughes, in his April 2006 report on the provincial child welfare system, the BC Children and Youth Review, made recommendations relating to a "new plan for external oversight". Two key elements of this report called for the appointment of a new independent officer of the Legislature, a Representative for Children and Youth, and a new Select Standing Committee on Children and Youth, to which the Representative would report to "at least annually".

The Representative's enabling legislation, the ***Representative for Children and Youth Act,*** requires that a special committee of the Legislative Assembly unanimously recommend the appointment of a person to be the Representative for Children and Youth for the province. Accordingly, on November 27, 2006, the House appointed Ms. Mary Ellen Turpel-Lafond as the province's first Representative for Children and Youth on the unanimous recommendation of a special committee.

In anticipation that the five-year term of the first Representative for Children and Youth expires in the fall of 2011, the Legislative Assembly created the Special Committee to Appoint a Representative for Children and Youth and gave it terms of reference for that purpose. This report contains the Special Committee's unanimous recommendation to the Legislative Assembly regarding the appointment of a Representative for Children and Youth for British Columbia, as required by section 2 of the ***Representative for Children and Youth Act.***

Meeting Schedule

In addition to informal discussions to plan the process, the Committee met on the following dates for the purposes described below:

Thursday, July 21, 2011	Election of Chair and Deputy Chair Committee Procedure and Appointment Process
Tuesday, August 30, 2011	Subcommittee meeting
Tuesday, September 27, 2011	Informal site visit – Office of the Representative for Children and Youth, Victoria
Thursday, September 29, 2011	Interview
Tuesday, October 18, 2011	Deliberations and Adoption of Report

Selection Process

On July 21, 2011, the Special Committee to Appoint a Representative for Children and Youth held its organizational meeting for the third session. The Chair of the Select Standing Committee on Children and Youth provided an update on this committee's work, including the upcoming review of the *Representative for Children and Youth Act.*

Some members of the Special Committee were concerned that the review of the Act would likely not be completed before the Representative for Children and Youth's current term expired. Consequently, there was a potential risk that the statutory review process might recommend amendments affecting the statutory responsibilities and functions of the position. The Special Committee authorized the newly elected Chair and Deputy Chair to meet as a subcommittee to discuss how best to proceed.

As part of its planning process, the subcommittee considered three options. One option was to invite the incumbent to submit an application and to undergo an interview with the Special Committee. A second option was an open competition, inviting prospective candidates to submit an application, conducting candidate interviews, followed by the Special Committee's deliberations, and a recommendation to the House. A final option was to defer proceeding with the selection process until the Select Standing Committee on Children and Youth had completed its review of the Act.

After consultation and due consideration, the subcommittee selected the first option and recommended that the incumbent be invited to submit an application and to undergo an interview with the Special Committee.

The interview on September 29, 2011, confirmed the Special Committee's preliminary assessment of the incumbent's qualifications. Ms. Turpel-Lafond conveyed her strong commitment to carrying out the functions of the position and articulated a compelling vision and goals for a second term.

The Special Committee was impressed with Ms. Turpel-Lafond's track record during the past five years as B.C.'s Representative for Children and Youth. Members believe that she has shown leadership in defining the position and that the Province would continue to be well-served by her commitment to the child-serving system.

At the interview, committee members also discussed with Ms. Turpel-Lafond the prospect of legislative amendments to the *Representative for Children and Youth Act* during her second term. In the course of this discussion, Ms. Turpel-Lafond made a commitment to carry out her responsibilities, if reappointed, in accordance with any revisions made to the enabling legislation.

Accordingly, the Special Committee unanimously agreed to recommend the reappointment of Mary Ellen Turpel-Lafond for a second five-year term as B.C.'s Representative for Children and Youth.

Recommendation

The Special Committee unanimously recommends to the Legislative Assembly that **Mary Ellen Turpel-Lafond** be reappointed Representative for Children and Youth for the Province of British Columbia, pursuant to section 2(1) of the *Representative for Children and Youth Act*.

Biographical Information

Mary Ellen Turpel-Lafond was appointed B.C.'s first Representative for Children and Youth in November 2006. The Representative supports children, youth and families who need help in dealing with the child-serving system, provides oversight to the Ministry of Children and Family Development and advocates for improvements to the child-serving system. The Representative is an Independent Officer of the Legislature.

Ms Turpel-Lafond is a judge on leave from the Saskatchewan Provincial Court.

She worked as a criminal law judge in youth and adult courts, with an emphasis on developing partnerships to better serve the needs of young people in the justice system, particularly sexually exploited children and youth, and children and youth with disabilities, such as those who suffer from fetal alcohol spectrum disorder.

She holds a doctorate of law from Harvard Law School and a master's degree in international law from Cambridge University, a law degree from Osgoode Hall Law School, and a bachelor of arts degree from Carleton University.

In 2007, the Indigenous Bar Association awarded her the distinction of 'Indigenous Peoples' Counsel'. As well, Time Magazine has twice bestowed honours upon Ms Turpel-Lafond, naming her one of the '100 Global Leaders of Tomorrow' in 1994, and one of the 'Top 20 Canadian Leaders for the 21st Century' in 1999.

Ms Turpel-Lafond is the elected President of the Canadian Council of Child and Youth Advocates, an alliance of provincial children's advocates from across the country who champion the voice and rights of children in their respective provinces and territories. She also serves on the Board of Directors of UNICEF Canada.

A member of the Muskeg Lake Cree Nation and a mother of four, she is active in her First Nations community.

Appendix A: *Representative for Children and Youth Act – [SBC 2006] Chapter 29*

Assented to May 18, 2006

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PART 1 — INTERPRETATION

Definitions

1 In this Act:

"child" means a person under 19 years of age;

"critical injury" means an injury to a child that may

(a) result in the child's death, or
(b) cause serious or long-term impairment of the child's health;

"**designated services**" means any of the following services or programs for children and their families provided under an enactment or provided or funded by the government:

(a) services or programs under the *Adoption Act*, the *Child Care BC Act*, the *Child Care Subsidy Act*, the *Child, Family and Community Service Act*, the *Community Living Authority Act* and the *Youth Justice Act*;
(b) early childhood development and child care services;
(c) mental health services for children;
(d) addiction services for children;
(e) services for youth and young adults during their transition to adulthood;
(f) additional services or programs that are prescribed under section 29 (2) (a);

"director" means a director designated under the *Child, Family and Community Service Act*;

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*, but includes contact information as defined in that Act;

"public body" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"representative" means the Representative for Children and Youth appointed under section 2 and, other than in sections 2 (1), (3) and (4), 4 (2) and (3) and 5, includes a person appointed under section 5 to act as the Representative for Children and Youth;

"reviewable services" means any of the following designated services:

(a) services or programs under the *Child, Family and Community Service Act* and the *Youth Justice Act*;
(b) mental health services for children;
(b.1) addiction services for children;
(c) additional designated services that are prescribed under section 29 (2) (b);

"special committee" means a special committee of the Legislative Assembly;

"standing committee" means, except in sections 18 and 21, the Select Standing Committee on Children and Youth;

"youth" means a person who is 16 years of age or older but is under 19 years of age.

PART 2 — APPOINTMENT OF REPRESENTATIVE

Appointment of Representative for Children and Youth

2 (1) The Legislative Assembly, by resolution, may appoint as the Representative for Children and Youth a person who has been unanimously recommended for the appointment by a special committee.

(2) The representative is an officer of the Legislature.

(3) The representative must be appointed for a term of 5 years and may be reappointed under subsection (1) for a further 5 year term.

(4) A person must not be appointed under subsection (1) for a third or subsequent term.

Remuneration

3 (1) The representative is entitled

(a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia, and

(b) to be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the functions and duties of the office.

(2) The public service plan as defined in section 1 (1) of the ***Public Sector Pension Plans Act*** applies to the representative.

Resignation, removal or suspension of representative

4 (1) The representative may resign at any time by giving written notice

(a) to the Speaker of the Legislative Assembly, or

(b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

(2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the representative, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.

(3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the standing committee may suspend, by unanimous resolution, the representative for cause or incapacity, with or without salary, for a period that must be set by the standing committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

Appointment of acting representative

5 (1) If the representative is suspended, the office is vacant or the representative is temporarily absent because of illness or another reason, the Legislative Assembly, on the recommendation of the standing committee, may appoint an acting representative to exercise the powers and perform the functions and duties of the representative until whichever of the following is the case and occurs first:

(a) the suspension ends;

(b) a person is appointed under section 2;

(c) the representative returns to office after the temporary absence.

(2) If the representative is suspended, the office is vacant or the representative is temporarily absent because of illness or another reason, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the standing committee may appoint an acting representative to exercise the powers and perform the functions and duties of the representative until whichever of the following is the case and occurs first:

(a) the suspension ends;

(b) a person is appointed under section 2;

(c) the representative returns to office after the temporary absence.

PART 3 — REPRESENTATIVE'S FUNCTIONS AND GENERAL POWERS

Functions of representative

6 The representative is responsible for performing the following functions in accordance with this Act:

(a) support, assist, inform and advise children and their families respecting designated services, which activities include, without limitation,

(i) providing information and advice to children and their families about how to effectively access designated services and how to become effective self-advocates with respect to those services,

(ii) advocating on behalf of a child receiving or eligible to receive a designated service, and

(iii) supporting, promoting in communities and commenting publicly on advocacy services for children and their families with respect to designated services;

(b) monitor, review, audit and conduct research on the provision of a designated service by a public body or director for the purpose of making recommendations to improve the effectiveness and responsiveness of that service, and comment publicly on any of these functions;

(c) review, investigate and report on the critical injuries and deaths of children as set out in Part 4;

(d) perform any other prescribed functions.

Representative's staff

7 (1) The representative, in accordance with the *Public Service Act*, may appoint

(a) one or more deputy representatives in accordance with the regulations, and

(b) any other employees necessary to enable the representative to exercise the powers and perform the functions and duties of the office.

(2) Before appointing a deputy representative under subsection (1) (a), the representative must consider the skills, qualifications and experience of the person, including the person's understanding of or involvement in the lives of aboriginal children and their families in British Columbia.

(3) For the purpose of the application of the *Public Service Act* to subsection (1) of this section, the representative is deemed to be a deputy minister.

(4) The representative may retain consultants, experts, specialists, or other persons that the representative considers necessary to enable or assist the representative to exercise the powers or perform the functions or duties under this Act.

(5) The representative may establish the remuneration and other terms and conditions of a person retained under subsection (4) and the *Public Service Act* does not apply in respect of that person.

Power to delegate

8 (1) The representative may delegate, in writing, to a person or class of persons any power, function or duty of the representative under this Act, subject to terms and conditions the representative considers appropriate, except the power

(a) to delegate under this section, and

(b) to make a report under this Act.

(2) A delegation under this section is revocable at will and does not prevent the representative from exercising the delegated power at any time.
(3) If the representative who makes a delegation ceases to hold office, the delegation continues in effect so long as the delegate continues in office unless revoked by a succeeding representative.
(4) A person purporting to exercise a power or perform a function or duty of the representative through a delegation under this section must produce, on request, evidence of the person's authority to exercise the power or perform the function or duty.

No power to act as legal counsel

9 The representative may not act as legal counsel in person or by agent.

Right to information

10 (1) In this section, ***"officer of the Legislature"*** has the same meaning as in the *Freedom of Information and Protection of Privacy Act*, but does not include the representative.
(2) The representative has the right to any information that
(a) is in the custody or control of
(i) a public body other than an officer of the Legislature, or
(ii) a director, and
(b) is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.
(3) The public body or director must disclose to the representative the information to which the representative is entitled under subsection (2).
(4) This section applies despite
(a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and
(b) any other enactment, other than a restriction in section 51 of the *Evidence Act*.

PART 4 — REVIEWS AND INVESTIGATIONS OF CRITICAL INJURIES AND DEATHS

Reviews of critical injuries and deaths

11 (1) After a public body responsible for the provision of a reviewable service becomes aware of a critical injury or death of a child who was receiving, or whose family was receiving, the reviewable service at the time of, or in the year previous to, the critical injury or death, the public body must provide information respecting the critical injury or death to the representative for a review under subsection (3).
(2) For the purposes of subsection (1), the public body may compile the information relating to one or more critical injuries or deaths and provide that information to the representative in time intervals agreed to between the public body and the representative.
(3) The representative may conduct a review for the purpose of identifying and analyzing recurring circumstances or trends to improve the effectiveness and responsiveness of a reviewable service or to inform improvements to broader public policy initiatives.

Investigations of critical injuries and deaths

12 (1) The representative may investigate the critical injury or death of a child if, after the completion of a review of the critical injury or death of the child under section 11, the representative determines that

(a) a reviewable service, or the policies or practices of a public body or director, may have contributed to the critical injury or death, and

(b) the critical injury or death

(i) was, or may have been, due to one or more of the circumstances set out in section 13 (1) of the *Child, Family and Community Service Act*,

(ii) occurred, in the opinion of the representative, in unusual or suspicious circumstances, or

(iii) was, or may have been, self-inflicted or inflicted by another person.

(2) The standing committee may refer to the representative for investigation the critical injury or death of a child.

(3) After receiving a referral under subsection (2), the representative

(a) may investigate the critical injury or death of the child, and

(b) if the representative decides not to investigate, must provide to the standing committee a report of the reasons the representative did not investigate.

(4) If the representative decides to investigate the critical injury or death of a child under this section, the representative must notify

(a) the public body, or the director, responsible for the provision of the reviewable service, or for the policies or practices, that may have contributed to the critical injury or death, and

(b) any other person the representative considers appropriate to notify in the circumstances.

Jurisdiction of representative in investigations

13 Despite section 12, this Act does not authorize the representative to investigate the critical injury or death of a child

(a) until the completion of a criminal investigation and criminal court proceedings respecting the critical injury or death of the child,

(b) if a coroner investigates the death of the child, until the earlier of

(i) the date on which a coroner has

(A) reported to the chief coroner under section 15 or 16 of the *Coroners Act*, and

(B) the chief coroner indicates to the coroner, under section 44 (1) (b) of the Coroners Act, that the chief coroner has no further directions in respect of the death,

(ii) the date on which a coroner sends, under section 22 (2) of the *Coroners Act*, notice of an inquest to a sheriff, directing the sheriff to summon a jury for that purpose, and

(iii) one year after the death, and

(c) if a public body, or a director, responsible for the provision of a reviewable service has, at the time of the critical injury or death of the child, written procedures in place for investigating critical injuries or deaths and the public body or director investigates the critical injury or death of the child, until the earlier of

(i) the completion of the investigation, and

(ii) one year after the critical injury or death of the child.

Power to compel persons to answer questions and order disclosure

14 (1) For the purposes of an investigation under this Part, the representative may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the representative to answer questions on oath or affirmation, or in any other manner;

(b) produce for the representative a record or thing in the person's possession or control.

(2) The representative may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (1), or

(b) directing any officers and governing members of a person to cause the person to comply with an order made under subsection (1).

Contempt proceeding for uncooperative person

14.1 The failure or refusal of a person subject to an order under section 14 to do any of the following makes the person, on application to the Supreme Court by the representative, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

(a) attend before the representative;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

Multidisciplinary team

15 In accordance with the regulations, the representative may establish and appoint the members of a multidisciplinary team to provide advice and guidance to the representative respecting the reviews and investigations of critical injuries and deaths of children conducted under this Part.

Consultation, disclosure and recommendations

15.1 (1) At any time during or after an investigation under section 12, the representative may consult with a public body, director or person the representative considers appropriate in relation to the critical injury or death of the child.

(2) If during an investigation under section 12 the representative receives a request for consultation from a public body or director, the representative must consult with the public body or director in relation to the critical injury or death of the child.

(3) If consulting with a public body, director or person under this section, the representative may

(a) disclose to the public body, director or person the personal information the representative considers necessary and appropriate, and

(b) make recommendations to the public body or director, or to another public body or director, to improve the effectiveness and responsiveness of a reviewable service.

Reports after reviews and investigations

16 (1) The representative may aggregate and analyze the information received from the reviews and investigations conducted under sections 11 and 12 and produce a report of the aggregated and analyzed information that does not contain information in individually identifiable form.

(2) The representative must provide a report made under subsection (1) to the following:

(a) the standing committee;

(b) the public body, or the director, responsible for the provision of a reviewable service that is a subject of the report;

(c) any other public body, director or person that the representative considers appropriate.

(3) After an investigation of the critical injury or death of a child under section 12, the representative must make a report on the individual critical injury or death of the child.

(4) A report made under subsection (3) must contain the representative's reasons for undertaking the investigation and may contain the following:

(a) recommendations for

(i) the public body, or the director, responsible for the provision of a reviewable service that is a subject of the report, or

(ii) any other public body, director or person that the representative considers appropriate;

(b) personal information, if, in the opinion of the representative,

(i) the disclosure is necessary to support the findings and recommendations contained in the report, and

(ii) the public interest in the disclosure outweighs the privacy interests of the individual whose personal information is disclosed in the report;

(c) any other matters the representative considers relevant.

(5) A report made under subsection (3) may be provided to any person that the representative considers appropriate and must be provided to

(a) the standing committee,

(b) the public body, or the director, responsible for the provision of a reviewable service that is a subject of the report, and

(c) the public body, or the director, that is a subject of recommendations in the report, if not already provided the report under paragraph (b).

(6) to (8) [Repealed 2007-5-15.]

PART 5 — ADMINISTRATIVE AND GENERAL PROVISIONS

Service plan

17 (1) For the 2008/2009 fiscal year of the government and for each subsequent fiscal year of the government, the representative must prepare a service plan that includes a statement of goals and identifies specific objectives and performance measures that will be required to exercise the powers and perform the functions and duties of the representative during that fiscal year.

(2) The representative must deliver a service plan described in subsection (1) to the Speaker, and the Speaker must lay the service plan before the Legislative Assembly and the standing committee as soon as possible.

Preparation of estimates for appropriation purposes

18 (1) In this section and section 21, ***"standing committee"*** means the Select Standing Committee on Finance and Government Services.

(2) For the 2008/2009 fiscal year of the government and for each subsequent fiscal year of the government, the representative must present to the standing committee an estimate of the resources, stated in a form suitable for inclusion in the main estimates, that will be required to exercise the powers and perform the functions and duties of the representative during that fiscal year.

(3) The standing committee must review and may adjust as it considers appropriate the estimate received under subsection (2) and must transmit the resulting estimate to the minister responsible for the *Financial Administration Act*.

(4) The estimate transmitted under subsection (3) is deemed to be recommended by the standing committee and must be included by the minister responsible for the *Financial Administration Act* as part of the main estimates for the fiscal year in respect of which the estimate was made and submitted to the Lieutenant Governor for recommendation to the Legislative Assembly.

(5) Notice of a meeting of the standing committee for the purposes of subsection (3) must be given to the representative and to the chair of Treasury Board.

Annual reports

19 (1) Beginning in 2009, the representative must report annually, before September 30 of each year, to the Speaker of the Legislative Assembly on

(a) the representative's work with aboriginal children and their families,

(a.1) the other work of the representative, and

(b) the attainment of the goals and the specific objectives and performance measures of the representative as set out in the service plan referred to in section 17 (1),

and this report must include financial statements for the representative prepared in accordance with generally accepted accounting principles.

(2) In relation to subsection (1) (b), the report must compare actual results for the preceding fiscal year with the expected results identified in the service plan for the representative for that fiscal year.

(3) The Speaker must lay each annual report before the Legislative Assembly and the standing committee as soon as possible.

Special reports

20 (1) The representative may make a special report to the Legislative Assembly if the representative considers it necessary to do so.

(2) A report made under subsection (1) may contain the following:

(a) recommendations for

(i) the public body, or the director, responsible for the provision of a designated service, or

(ii) any other public body or director the representative considers appropriate;

(b) a report on the level of compliance with previous recommendations made by the representative under this Act to

(i) the public body, or the director, responsible for the provision of a designated service, or

(ii) any other public body or director;

(b.1) a report on the provision of a designated service for children in different geographic, racial, cultural or religious communities of British Columbia;

(c) any other matter the representative considers necessary.

(3) The representative must deliver the special report to the Speaker, and the Speaker must lay the report before the Legislative Assembly and the standing committee as soon as possible.

Other financial requirements

21 (1) If required by the standing committee referred to in section 18 (1) or the minister responsible for the ***Financial Administration Act***, the representative must submit financial reports and statements in the form, with the information and at the time the standing committee or the minister requests.

(2) The minister responsible for the ***Financial Administration Act*** may direct the Comptroller General to examine, and report to Treasury Board on, any or all of the financial and accounting operations of the representative.

(3) In accordance with the ***Auditor General Act***, the Auditor General must audit the accounts of the representative at least once each year.

Agreements

22 The representative may enter into an agreement for the purpose of exercising the powers and performing the functions and duties under this Act.

Confidentiality

23 (1) Before beginning to exercise his or her powers and perform his or her functions and duties under this Act, the representative must take an oath before the Clerk of the Legislative Assembly

(a) to faithfully and impartially exercise the powers and perform the functions and duties of the representative, and

(b) not to divulge any information received under this Act, except as permitted under this Act.

(2) Before beginning to exercise his or her powers and perform his or her functions and duties under this Act, each deputy representative appointed under section 7 (1) (a) must take an oath before the representative

(a) to faithfully and impartially exercise the powers and perform the functions and duties delegated by the representative to the deputy representative, and

(b) not to divulge any information received under this Act, except as permitted under this Act.

(3) For the purposes of subsection (2), the representative is a commissioner for taking affidavits in British Columbia.

(4) The representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must, except as specifically authorized under this Act, maintain confidentiality in respect of all matters that come to their knowledge in the exercise of powers and the performance of functions and duties under this Act.

(4.1) Despite any other provision of this Act except subsection (7) of this section, on the request of any person, the representative may disclose information, including personal information, if, in the opinion of the representative,

(a) the disclosure is necessary to confirm the representative is performing, has performed or intends to perform one or more of the functions set out in section 6 (a) to (c) in respect of an individual, and

(b) the public interest in the disclosure outweighs the privacy interests of any individual whose personal information is disclosed.

(5) The representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of any matter coming to their knowledge in the exercise of powers and the performance of functions and duties under this Act, except

(a) to enforce the representative's powers of review and investigation,

(b) to enforce compliance with this Act, or

(c) with respect to a trial of a person for perjury.

(6) [Repealed 2008-42-123.]

(7) Subject to subsections (5) and (8) (a), the representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must not disclose information that could reasonably be expected to reveal the identity of a person who has made a report under section 14 of the *Child, Family and Community Service Act*.

(8) Subsection (7) does not apply if

(a) the person who made the report consents to the disclosure.

(b) [Repealed 2008-42-123.]

Privileges respecting communications and information

24 A person has the same privileges in relation to giving information, answering questions or producing documents or things to the representative, or to a person appointed, employed or retained under section 7 (1) or (4), relating to a review or an investigation under Part 4 as the person would have with respect to a proceeding in a court.

Personal liability protection

25 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against

(a) the representative,

(b) a person appointed, employed or retained under section 7 (1) or (4), or

(c) a member of a multidisciplinary team appointed under section 15

because of anything done or omitted in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any function or duty under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

(3) Subsection (1) does not absolve the government from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government would be vicariously liable if this section were not in force.

(4) The government must indemnify any person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken against the person for anything done or omitted in good faith as described in subsection (1).

Communication by child

26 (1) If a child in a foster home, group home, facility or other place in which a designated service is provided asks to communicate with the representative, the person in charge of that place must immediately forward the request to the representative.

(2) If a child in a foster home, group home, facility or other place in which a designated service is provided writes a letter addressed to the representative, the person in charge of that place must immediately forward the letter unopened to the representative.

Protection for persons giving information to or assisting representative

27 A person must not discharge, suspend, expel, intimidate, coerce, evict or impose a financial or other penalty on or otherwise discriminate against another person because the other person gives information to the representative or otherwise assists the representative in an investigation or other proceeding under this Act.

Offence

28 (1) A person who contravenes section 27 commits an offence and is liable to a fine of up to $10 000 or to imprisonment for up to 6 months, or to both.

(2) Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

29 (1) The Lieutenant Governor in Council may make regulations authorized by section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) for the purposes of the definition of "designated services", prescribing an additional service or program that is

(i) provided, authorized or funded under an Act,

(ii) provided, authorized or funded by a ministry or agency of the government, or

(iii) provided in a facility or class of facilities licensed or regulated under an Act;

(b) for the purposes of the definition of "reviewable services", prescribing an additional designated service that is a reviewable service;

(c) prescribing other functions of the representative;

(d) respecting the qualifications of a deputy representative or the procedures for appointing a deputy representative;

(e) respecting matters relating to the establishment of a multidisciplinary team, including appointment criteria and procedures;

(f) [Repealed 2007-5-22.]

(g) defining any word or expression used but not defined in this Act;

(h) respecting any matters that are necessary for the orderly transition from the application of the Office of Children and Youth Act to the application of this Act.

(3) In making regulations under this section, the Lieutenant Governor in Council may do one or more of the following:

(a) in relation to regulations under subsection (2) (a), prescribe different services or programs for the purposes of different provisions of this Act;

(b) in relation to regulations under subsection (2) (b), prescribe different designated services for the purposes of different provisions of this Act;

(c) in relation to regulations under subsection (2) (d), set different qualifications or different procedures for the appointment of deputy representatives carrying out different functions;

(d) make different regulations for different persons or classes of persons;

(e) make different regulations for different geographical areas in British Columbia;

(f) delegate a matter to a person;

(g) confer a discretion on a person.

Review of the Act

30 To determine whether the functions of the representative described in section 6 are still required to ensure that the needs of children are met, the standing committee, within 5 years of the coming into force of section 6, must undertake a comprehensive review of this Act or a review of portions of this Act.

PART 6 — TRANSITIONAL PROVISIONS

Transfer of records

30.1 (1) On the repeal of the *Office for Children and Youth Act*, all records obtained under that Act must be transferred to the representative, including, but not limited to, all records originally produced under the *Child, Youth and Family Advocacy Act* or the *Children's Commission Act*.

(2) On the effective date of a transfer under subsection (1),

(a) the records cease to be the records of the transferor and become the records of the transferee, and

(b) the confidentiality provisions of this Act apply to the transferred records.

CONSEQUENTIAL AMENDMENTS

[Note: See Table of Legislative Changes for the status of sections 31 to 37.]

Section(s)	*Affected Act*
31–34	*Child, Family and Community Service Act*
35–36	*Freedom of Information and Protection of Privacy Act*
37	*Office for Children and Youth Act*

COMMENCEMENT

38 This Act comes into force by regulation of the Lieutenant Governor in Council.